

Senate Bill 366

By: Senators Stoner of the 6th, Seay of the 34th, Golden of the 8th, Brown of the 26th, Henson of the 41st and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to provide for a phase in on the dedication of a portion of the state sales and use tax on motor fuels to transportation purposes; to provide for an exemption from the cap on the imposition of local sales and use taxes; to provide for definitions; to provide for an up to 1 percent sales and use tax to be used to fund transportation purposes in special transportation districts within the state; to provide for the creation of such districts, the governance thereof, and the development of a list of transportation purposes in the district; to provide an exception for counties and municipalities already levying a tax for public transportation purposes; to provide an exemption from expenditures on public transportation for districts outside the metropolitan transportation district; to provide that each county may opt out of the district; to provide for the district to pass a resolution calling for a referendum within the district; to provide for the tax to be levied by the participating counties; to provide for the funds collected to be deposited in trust accounts; to provide for 50 percent of the proceeds of a levy to be spent on public transportation in certain counties; to provide for contracting and constructing of the transportation purposes on the regional lists; to provide for exemptions; to provide for related matters; to provide for a conditional effective date; to provide for automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended in Code Section 48-8-3.1, relating to exemptions as to motor fuel taxes, by adding a new subsection as follows:

"(d) The phase in of the transfer of a portion of the state sales and use tax on motor fuels to be used for transportation purposes, as provided for in Article III, Section IX, Paragraph VI(b)(2) of the Constitution, shall be as follows:

(1) As of July 1, 2012, 25 percent of the applicable amount collected in the previous fiscal year shall be transferred to the fund in the Department of Transportation to be used for transportation purposes;

(2) As of July 1, 2013, 50 percent of the applicable amount collected in the previous fiscal year shall be transferred to the fund in the Department of Transportation to be used for transportation purposes;

(3) As of July 1, 2014, 75 percent of the applicable amount collected in the previous fiscal year shall be transferred to the fund in the Department of Transportation to be used for transportation purposes; and

(4) As of July 1, 2015, and annually thereafter, 100 percent of the applicable amount collected in the previous fiscal year shall be transferred to the fund in the Department of Transportation to be used for transportation purposes."

SECTION 2.

Said chapter is further amended in Code Section 48-8-6, relating to limitations on local imposition of certain taxes, by revising subsection (b) as follows:

"(b) There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; provided, however, that the exception provided for under this paragraph shall only apply in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs as defined under paragraph ~~(3)~~(4) of Code Section 48-8-200, or any combination thereof and with respect to which the county has entered into an intergovernmental contract with a municipality, in which the average waste-water system flow of such municipality is not less than 85 million

gallons per day, allocating proceeds to such municipality to be used solely for water and sewer projects and costs as defined under paragraph ~~(3)~~(4) of Code Section 48-8-200.

The exception provided for under this paragraph shall apply only during the period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for under this paragraph shall not apply in any county in which a tax is being imposed under Article 2A of this chapter;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax; ~~and~~

(4) A sales and use tax levied under Article 4 of this chapter;

(5) A sales and use tax levied under Article 5 of this chapter; and

(6) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax ~~may~~ shall not be imposed."

SECTION 3.

Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 5

48-8-220.

As used in this article, the term:

(1) 'Aircraft' means any contrivance used or designed for navigation or flight through the air.

(2) 'District' means the metropolitan transportation district and special transportation districts created in Code Sections 48-8-222 and 48-8-223.

(3) 'Levy' means the district-wide sales and use tax authorized by Code Section 48-8-221.

(4) 'Motor vehicle' means:

(A) Every self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways; and

(B) Any other machine or mechanical contrivance using motor fuel to the extent that the machine or contrivance is operated upon the public highways.

(5) 'Public transportation' means any transportation project or purpose primarily used to provide alternatives to using motor vehicles as a method of transportation. It includes, but is not limited to, passenger rail, public transit, buses, and bike paths, including the necessary infrastructure and the costs of operation and maintenance.

(6) 'Qualified municipality' means a qualified municipality as defined in Code Section 48-8-110 situated wholly or partly within a district.

(7) 'Transportation agency' means a Georgia department, authority, or agency authorized by general law to engage in activities relating to transportation projects or purposes.

(8) 'Transportation purpose' or 'transportation project' means, without limitation, roads and bridges, freight and passenger rail, airports, public transit, buses, seaports, and all activities and structures useful and incident to providing, operating, and maintaining the same; provided, however, that 'transportation purpose' or 'transportation project' shall not include purposes or projects which are not included in any state-wide strategic transportation plan adopted by the General Assembly.

(9) 'Voting officials of the district' means the elected officials representing the county, counties, or qualified municipalities in a district.

(10) 'Watercraft' means any boat, vessel, or craft, other than a seaplane, used or capable of being used as a means of transportation on water, which is more than 18 feet in length and is designed to carry two or more persons.

48-8-221.

(a) In accordance with the provisions of Article IX, Section IV, Paragraph V of the Constitution, on or after January 1, 2011, a single sales and use tax of up to 1 percent may be levied as provided in this article to fund transportation purposes in a district.

(b) A county shall be wholly within one transportation district. No county shall be divided among more than one district. The boundaries of the districts shall be otherwise as determined by the constituent counties.

(c) After the formation of a special transportation district, but prior to the passage of the resolution calling for imposition of the tax authorized by this article, the governing authority of any county sharing a boundary with any county within a district may by resolution opt into such district. Prior to the county governing authority's vote to opt into the district, the county shall follow the procedures of paragraph (2) of subsection (a) of Code Section 48-8-223 for meeting with all of the qualified municipalities. In order to add the county to the district, the governing authorities of the counties within the district must concur. Not less than ten days prior to a vote on a resolution for such purpose, notice of

the intention of a county to opt into the district shall be transmitted by the governing authority of such county to the metropolitan transportation district board if created pursuant to Code Section 48-8-222 or to the governing authority of each qualified municipality within the county proposing to opt into the district and to the governing authority of each other county within such district.

48-8-222.

(a) There is created within this state a metropolitan transportation district encompassing and being coterminous with the geographical area on January 1, 2010, of each metropolitan area planning and development commission that was activated prior to January 1, 1972, pursuant to Article 4 of Chapter 8 of Title 50. The management and supervision of such district shall be vested in a district board to consist of those members of the metropolitan area planning and development commission as provided for by Code Section 50-8-84 holding elective public office, to serve during their service as members of the commission and until their successors are duly elected and qualified.

(b) Each county in a district may select one or more transportation agencies to be responsible for designing, planning, and contracting for the construction of district projects.

(c) The metropolitan transportation district may authorize the levy provided for by this article as follows:

(1) The district, in cooperation with its constituent counties and qualified municipalities and its designated transportation agency or agencies, shall propound by resolution a list of transportation purposes to be funded by a district levy. Approval of such resolution shall require the affirmative vote of a majority of the voting members of the district.

Such resolution shall include:

(A) A list of the specific transportation purposes to be funded;

(B) The approximate cost of such purposes, which shall also be the maximum amount of net proceeds to be raised by the levy; and

(C) The rate of the levy.

(2) The district resolution provided for by paragraph (1) of this subsection shall be immediately transmitted to the governing authority of each county and qualified municipality within the district. Each such governing authority shall thereafter have 45 days from the date of such submission to vote to opt the county out of such district. A county shall opt out of the district upon:

(A) The affirmative vote of the county governing authority on a resolution for such purpose; and

(B) If there are one or more qualified municipalities within the county whose area within the county contains more than 50 percent of the population of the county, the

affirmative vote on resolutions for such purpose by the governing authorities of qualified municipalities representing more than 50 percent of the population of the county.

Only the vote described in subparagraph (A) of this paragraph shall be required for the opt out if the county is not described in subparagraph (B) of this paragraph. For a county described in subparagraph (B) of this paragraph, the votes described in subparagraphs (A) and (B) of this paragraph shall be required for the opt out. All measurements of population for purposes of this paragraph shall be according to the United States decennial census of 2000 or any future such census. Notice of the opting out of a county shall be immediately transmitted by the governing authority of such county to the governing authority of each other county within the district, to the governing authority of each qualified municipality within the county, and to the governing authority of each county sharing a border with any county within the district;

(3) Upon any county opting out of a district pursuant to paragraph (2) of this subsection, any remaining constituent county shall have 30 days from the expiration of the 45 day period provided for in paragraph (2) of this subsection to opt out of such district by the same mechanism and with the same notice provided for in paragraph (2) of this subsection;

(4) Those counties that do not opt out of a district within the time limits prescribed in this subsection and those which opt in pursuant to the provisions subsection (c) of Code Section 48-8-221 shall thereafter constitute the special transportation district. The voting officials of the district shall be reconstituted to include, pursuant to subsection (c) of Code Section 48-8-221, only the elected officials of those counties and qualified municipalities included in the special transportation district;

(5) The voting officials of the district as reconstituted pursuant to paragraph (4) of this subsection shall meet as soon as practicable after the reconstitution of the district. The district in cooperation with its constituent counties and qualified municipalities and the designated transportation agency or agencies may revise by resolution the list of transportation projects, if necessary or advisable, to remove or amend any project planned for an area no longer within the district and to add or amend any project for an area that was added to the district; and

(6) As soon as practicable after the expiration of the time for removal of counties from a district and after any revision of such resolution after the removal of any counties from the district, the voting officials of the district may by a majority vote submit to electors of the district the transportation project list and the question of whether the levy provided for by this article should be approved.

203 48-8-223.

204 (a)(1) Special transportation districts not encompassing any part of the metropolitan
205 transportation district created pursuant to Code Section 48-8-222 may be created by the
206 governing authorities of two or more contiguous counties or by the governing authority
207 of a single county.

208 (2) Prior to the issuance of the call for the referendum required by subsection (d) of this
209 Code section, the county or counties that desire to levy a tax under this article within the
210 special transportation district created pursuant to this Code section shall deliver or mail
211 a written notice to the mayor or chief elected official in each municipality located within
212 the district. Such notice shall contain the date, time, place, and purpose of a meeting at
213 which the governing authorities of the county and of each qualified municipality are to
214 meet to discuss possible projects for inclusion in the referendum. The notice shall be
215 delivered or mailed at least ten days prior to the date of the meeting. The meeting shall
216 be held at least 30 days prior to the issuance of the call for the referendum.

217 (b)(1) Following the meeting required by paragraph (2) of subsection (a) of this Code
218 section, the governing authority or authorities of the county or counties within the district
219 may enter into an intergovernmental agreement with each other and with one or more
220 qualified municipalities within the district containing a combined total of no less than 50
221 percent of the aggregate municipal population located within the district.

222 (2) At a minimum, the intergovernmental agreement authorized by paragraph (1) of this
223 subsection shall include the following:

224 (A) A list of the projects and proposals qualifying as transportation purposes proposed
225 to be funded from the levy;

226 (B) The estimated or projected dollar amounts allocated for each transportation
227 purpose from proceeds from the levy authorized by this article;

228 (C) The procedures for distributing proceeds from the levy authorized by this article
229 to qualified municipalities;

230 (D) A schedule for distributing proceeds from the levy authorized by this article to
231 qualified municipalities which shall include the priority or order in which projects will
232 be fully or partially funded;

233 (E) A provision that all transportation purposes included in the agreement shall be
234 funded from proceeds from the levy authorized by this article except as otherwise
235 agreed;

236 (F) A provision that proceeds from the levy authorized by this article shall be
237 maintained in separate accounts and utilized exclusively for the specified purposes;

238 (G) Record-keeping and audit procedures necessary to carry out the purposes of this
239 article; and

(H) Such other provisions as the county, counties, and participating municipalities choose to address.

(c)(1) Following the commencement of negotiation, if the parties necessary to an agreement fail to reach an agreement within 60 days, such parties shall submit the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which reflects a good faith effort to resolve the dispute. Any negotiated agreement reached pursuant to this paragraph shall be in accordance with the requirements specified in paragraph (2) of this subsection. If the parties fail to reach an agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts, any party or parties necessary to an agreement may file a petition in superior court of the county seeking resolution of the items remaining in dispute. Such petition must be filed no later than 30 days after the last day of the 60 day alternative dispute resolution period. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The county and qualified municipalities representing at least 50 percent of the aggregate municipal population of all qualified municipalities located wholly or partially within the district shall separately submit to the judge and the other parties a written best and final offer as to the distribution of the tax proceeds. There shall be one such offer from the county or counties in the district and one from qualified municipalities representing at least 50 percent of the aggregate municipal population of all qualified municipalities located wholly or partially within the district. The visiting or senior judge shall conduct such hearings as the judge deems necessary and shall render a decision based on, but not limited to, the criteria in paragraph (2) of this subsection. The judge's decision on the allocation of the levy proceeds shall adopt one submitted best and final offer but shall also include findings of fact. The judge shall enter a final order containing a distribution certificate and transmit a copy of it to the revenue commissioner. Appeal shall be by application and the decision of the judge shall be altered only for the judge's disregard of the law, for partiality of the judge, or for corruption, fraud, or misconduct by the judge or a party.

(2) The judge's decision on the allocation of the levy proceeds shall be based upon, but not be limited to, the following criteria:

(A) Assurance of future trip reliability and competitive travel times;

(B) Navigation around metropolitan area congestion;

(C) Connection of major freight origins and destinations;

(D) Creation of limited access facilities for trucks connecting other origins and destinations;

(E) Creation of new capacity for freight rail;

(F) Addressing of major bottlenecks;

(G) Improvement or grade separation of major at-grade rail crossings;

(H) Expansion of access to jobs and linkage of labor markets;

(I) Implementation of current transportation plans;

(J) Creation of a high-speed or commuter rail network;

(K) Enhancement of public mass transit operations and capacity;

(L) Maintenance and improvement of existing roads and bridges; and

(M) Each jurisdiction's mileage of public roads and vehicle mileage traveled as determined by the Georgia Department of Transportation.

(3) Costs of any conflict resolution under paragraph (1) of this subsection shall be borne proportionately by the affected political subdivisions in accordance with the final percentage distributions of the proceeds of the levy as reflected by the negotiated agreement, adopted best and final offer, or as otherwise ordered by the court.

(d)(1) No later than 30 days after the execution of an intergovernmental agreement as provided for in subsection (b) of this Code section or entry of the judge's final order as provided in subsection (c) of this Code section, the governing authorities of the county or counties of the district shall call for a referendum to submit the project list and the question of whether the levy authorized by this article should be approved to electors of the district in an election called for such purpose and shall notify each county election superintendent within the district by forwarding to the superintendent a copy of such call for the imposition of the levy.

(2) The resolution authorized by paragraph (1) of this subsection shall describe:

(A) The specific transportation purposes to be funded; and

(B) The approximate cost of such transportation purposes, which shall also be the maximum amount of net proceeds to be raised by the levy.

(e) Each county in a district may select one or more transportation agencies to be responsible for designing, planning, and contracting for the construction of district projects.

48-8-224.

(a) Except as otherwise provided in this Code section, the procedures for conducting the referendum on the question of imposing the levy shall correspond generally to the procedures provided for by Part 1 of Article 3 of this chapter, except that the project or proposal list provided for by Code Sections 48-8-222 and 48-8-223, or a digest thereof,

shall be available during regular business hours in the office of the county clerk of each county that has authorized the levy.

(b) The ballot submitting the question of the imposition of the levy authorized by this article to the voters within the special district shall have written or printed thereon the following:

'() YES Shall a special percent sales and use tax be imposed in the special transportation district consisting of County (or Counties) for a () NO period of time not to exceed and for the raising of not more than an estimated amount of \$ for transportation purposes?'

(c) The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds. All persons desiring to vote in favor of imposing the levy shall vote 'Yes' and all persons opposed to imposing the levy shall vote 'No.' If more than one-half of the votes cast throughout the entire district are in favor of imposing the levy, then the levy shall be imposed as provided in this article.

(d) Where such question is not approved by the voters, the county or counties of the district may resubmit such question from time to time and may amend such project or proposal list or digest thereof. Proceedings for the reimposition of such levy shall be in the same manner as proceedings for the initial imposition of the levy, but the newly authorized levy shall not be imposed until the expiration of the levy then in effect.

(e) Whenever the levy is authorized pursuant to the provisions of this article, the counties within the approving district shall levy a sales and use tax as provided for by this article, to be collected as provided by law.

48-8-225.

(a) The proceeds of a levy authorized by this article shall be transferred to a trust fund maintained on behalf of the district by the metropolitan district board if created pursuant to Code Section 48-8-222 or by one of the counties that created the district or some other public body agreed to by the county or counties that created the district if the district was created pursuant to Code Section 48-8-223. Such proceeds are to be expended as provided for by this article and shall be used exclusively for the purpose or purposes specified in the resolution calling for imposition of the levy and shall not be commingled in any manner with any other funds held or received by any county, municipality, or metropolitan district board.

(b) In the metropolitan transportation district, no less than 50 percent of the proceeds of a levy authorized by this article shall be used for public transportation purposes.

(c) Any county or municipality that levies a tax for public transportation purposes shall not be required to expend any funds for public transportation purposes.

48-8-226.

Upon request of the metropolitan district board, if the district was created pursuant to Code Section 48-8-222, or upon request of the county or counties that created the district, if the district was created pursuant to Code Section 48-8-223, the transportation agency or agencies shall cooperate with the district and its constituent counties and qualifying municipalities and upon request of such parties shall be responsible for designing, planning, and contracting for the construction of the projects.

48-8-227.

Nothing in this article shall be construed to prohibit counties and municipalities located in a district from imposing as additional taxes local sales and use taxes otherwise authorized by general law.

48-8-228.

The levy authorized by this article shall not be subject to any allocation or balancing of state and federal funds provided for by general law, nor may such proceeds be considered or taken into account in any such allocation or balancing.

48-8-229.

(a) The levy provided for by this article shall only be levied on the first \$10,000.00 of any transaction regarding a motor vehicle, watercraft, or aircraft.

(b) The levy provided for by this article shall not apply to and shall not be levied on:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of tangible personal property used in the production or generation of energy; or

(3) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale.

48-8-230.

Except as otherwise specifically provided in this article, the levy authorized by this article shall be subject to any sales and use tax exemption which is otherwise imposed by general

378 law; provided, however, that such levy shall be levied on the sale of food or beverages as
379 provided for in paragraph (57) of Code Section 48-8-3.

380 48-8-231.

381 A record of transportation purposes and projects on which levy proceeds are used shall be
382 maintained by each county and municipality receiving proceeds from the levy authorized
383 by this article, and a report shall prepared not later than December 31 of each year. Such
384 record and report shall conform to the requirements of Code Section 48-8-122."

385 **SECTION 4.**

386 This Act shall become effective on January 1, 2011; provided, however, that this Act shall
387 only become effective on January 1, 2011, upon the ratification of a resolution at the
388 November, 2010, state-wide general election, which resolution amends the Constitution so
389 as to authorize the dedication of a portion of the state sales and use tax on motor fuels for
390 transportation purposes and the creation of special transportation districts for transportation
391 purposes. If such resolution is not so ratified, this Act shall not become effective and shall
392 stand repealed in its entirety on January 1, 2011.

393 **SECTION 5.**

394 All laws and parts of laws in conflict with this Act are repealed.